

[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA-2000-8278]

High Density Airports; Notice of lottery of slot exemptions at LaGuardia Airport

AGENCY: Federal Aviation Administration

ACTION: Notice of Intent to Conduct a Lottery of Takeoff and Landing Times at LaGuardia Airport.

SUMMARY: This notice announces the Federal Aviation Administration's (FAA) intention to hold a lottery, with the Port Authority of New York and New Jersey, in late November or early December to reallocate exemption slots at LaGuardia Airport as authorized under the Wendell H. Ford Aviation Investment and Reform Act of the 21st Century. The FAA finds that this action is necessary to address the level of delays that are currently experienced as a result of the significant increase in operations authorized by that legislation, and to prevent an increase in delays from additional flights scheduled to begin in the near future.

DATES: Comments must be received on or before November 20, 2000.

ADDRESSES: Comments on this notice should be mailed or delivered in duplicate, to: U.S. Department of Transportation Dockets, Docket No. FAA-2000-8278, 400 Seventh Street, SW, Room Plaza 401, Washington, DC 20590. Comments may also be sent electronically to the following Internet address: DMS.dot.gov. Comments may be filed and/or examined in Room Plaza 401 between 10 a.m. and 5 p.m. weekdays except Federal holidays.

FOR FURTHER INFORMATION CONTACT: David L. Bennett, Office of Airport Safety and Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone number 202-267-3053.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this process by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned decisions. Communications should identify the docket number and be submitted in triplicate to the above specified address. All communications and a report summarizing any substantive public contact with FAA personnel on this notice will be filed in the docket. The docket is available for public inspection both before and after the closing date for receiving comments.

Before taking any final action on this proposal, the Administrator will consider all comments made on or before the closing date for comments and the proposal may be changed in light of the comments received.

The FAA will acknowledge receipt of a comment if the commenter includes a self-addressed, stamped postcard with the comment. The post card should be marked "Comments to Docket No. FAA-2000- 8278." When the comment is received by the FAA, the postcard will be dated, time stamped, and returned to the commenter.

Authority

The FAA has broad authority under Title 49 of the United States Code (U.S.C.), Subtitle VII, to regulate and control the use of the navigable airspace of the United States.

Under 49 U.S.C. 40103, the agency is authorized to develop plans for and to formulate policy with respect to the use of navigable airspace and to assign by rule, regulation, or order the use of navigable airspace under such terms, conditions, and limitations as may be deemed necessary in order to ensure the safety of aircraft and the efficient utilization of the navigable airspace. Also, under section 40103, the agency is further authorized and directed to prescribe air traffic rules and regulations governing the efficient utilization of the navigable airspace.

The High Density Traffic Airports Rule, or “High Density Rule,” 14 CFR part 93, subpart K, was promulgated in 1968 to reduce delays at five congested airports: JFK International Airport, LaGuardia Airport, O’Hare International Airport, Ronald Reagan National Airport and Newark International Airport (33 FR 17896; December 3, 1968). The regulation limits the number of instrument flight rule (IFR) operations at each airport, by hour or half hour, during certain hours of the day. It provides for the allocation to carriers of operational authority, in the form of a “slot” for each IFR landing takeoff during a specific 30-or 60- minute period. The restrictions were lifted at Newark in the early 1970s.

“AIR-21”

On April 5, 2000, the “Wendell H. Ford Aviation Investment and Reform Act of the 21st Century” (“AIR- 21”) was enacted. Section 231 of AIR-21 significantly amended 49 U.S.C. § 41714 and included new provisions codified at 49 U.S.C. §§ 41716, 41717, and 41718. These provisions enable air carriers meeting specified criteria to obtain new slot exemptions at New York’s LaGuardia Airport (LaGuardia) and John F. Kennedy International Airport (JFK), Chicago’s O’Hare International Airport (O’Hare) and Washington DC’s Ronald Reagan Washington National Airport (National). As a result of

this legislation, the Department of Transportation (Department) issued eight orders establishing procedures for the processing of various applications.

Specifically, Order 2000-4-11 implements 49 U.S.C. 41716(a), which provides in pertinent part that an exemption must be granted to any airline using Stage 3 aircraft with less than 71 seats that proposes to provide nonstop service between LaGuardia and an airport that was designated as a small hub or nonhub in 1997, under certain conditions. The exemption must be granted if: (1) the airline was not providing such nonstop service between the small hub or nonhub and LaGuardia Airport during the week of November 1, 1999; or (2) the proposed service between the small hub or nonhub and LaGuardia, exceeds the number of flights provided between such airports during the week of November 1, 1999; or (3) if the air transportation pursuant to the exemption would be provided with a regional jet as replacement of turboprop service that was being provided during the week of November 1, 1999.

According to AIR-21 and the Department's Orders, air carriers meeting the statutory tests delineated above automatically receive blanket approval for slot exemptions, provided that they certify in accordance with 14 CFR 302.4(b) that they meet each and every one of the statutory criteria. The certification should state the communities and airport to be served, that the community was designated a small hub or nonhub as of 1997, that the aircraft used to provide the service have fewer than 71 seats, that the aircraft are Stage 3 compliant, and the planned effective dates. Carriers must also certify that the proposed service represents new service, additional frequencies, or regional jet service that has been upgraded from turboprop service when compared to service of the week of November 1, 1999. In addition, carriers must state the number of slot exemptions and the times needed to provide the service.

Order 2000-4-10 implements the provisions of 49 U.S.C. § 41716(b), which states in pertinent part, that exemptions must be granted to any new entrant or limited incumbent airline using Stage 3 aircraft that proposes "...to provide air transportation to or from LaGuardia or John F. Kennedy International Airport if the number of slot exemptions granted under this subsection to such air carrier with respect to such airport when added to the slots and slot exemptions held by such air carrier with respect to such airport does not exceed 20." Applications submitted under this provision must identify the airports to be served and the time requested.

Section 231 of AIR-21, 49 U.S.C. § 41715(b)(1) expressly provides that the provisions for slot exemptions are not to affect the FAA's authority for safety and the movement of air traffic. The actions proposed in this notice are taken under that FAA authority, and do not rescind the exemptions issued by the Department of Transportation under Orders 2000-4-10 and 2000-4-11. As provided in those orders, carriers that have filed the exemption certifications also need to obtain slot exemption times from the FAA. This notice proposes to limit and allocate those times, in recognition that it is not possible to add an unlimited number of new operations at LaGuardia Airport even if those operations would otherwise qualify for exemptions under AIR-21.

Lastly, section 93.225 of Title 14 of the Code of Federal Regulations sets forth the process for slot lotteries under the High Density Rule. The process described in the regulations is similar to the process described herein and allows for special conditions to be included when circumstances warrant special consideration.

Actions of the Port Authority of New York and New Jersey

In response to a significant increase in exemption operations under AIR-21 beginning in late summer (from 53 operations in August 2000 to 192 operations at the end

of September), the Port Authority of New York and New Jersey (Port Authority) issued a letter on August 2 to all carriers filing for AIR-21 exemptions requiring 45 days advance notice of new operations at the airport under AIR-21. On August 21, the Port Authority issued a second letter to carriers planning to initiate service under AIR-21 exemptions requesting that the carriers schedule their flights outside of the most congested hours in order to mitigate the delays generated by additional flights. On September 19, the Port Authority announced a temporary moratorium on new flights. In that letter, the Port Authority stated its intent to replace this moratorium as soon as possible with a measure that will prevent an unlimited increase in operations at LaGuardia, and at the same time fairly accommodate Federal interests in competition and in service to small hub or nonhub airports as provided in AIR-21. To that end, the Port Authority has proposed to the FAA the imposition of a limit on the number of AIR-21 exemption flights at LaGuardia, and the allocation of those flights to eligible carriers through a lottery procedure to address, in the short-term, the current situation at the airport.

The following factors describe the current operating conditions experienced at LaGuardia:

- There were more than 9,000 flight delays at LaGuardia in September 2000, up from 3,108 in September 1999. In September 2000, 25% of the flight delays in the U.S. were at LaGuardia. In September 1999, the figure was 12%.
- Average delays for many afternoon flights at LaGuardia in September 2000 exceeded 48 minutes. The average delay for all flights that month was 43 minutes.
- LaGuardia has recently experienced as many as 600 delayed flights on a day when there is good weather and no other significant problems in the air traffic control system.

- Some flights at LaGuardia have experienced average ground delay time that exceeds scheduled flight time.
- Air carriers routinely cancel scheduled flights, especially in afternoon and evening hours, due to aircraft positioning and other operational issues related to excessive delays.

Since AIR-21 was enacted on April 5, 2000:

- Carriers have filed exemption requests for more than 600 new flights a day at LaGuardia.
- As of November 1, almost 300 new flights are operating under AIR-21 exemptions.
- Carriers have published schedules for 28 new flights in December and 23 more new flights in January 2001.
- In April 2000, the number of scheduled operations at LaGuardia was 1064. As of November 1, that number is 1344.
- If the flights published for December and January began operation, there would be approximately 1395 scheduled operations each day at the airport, an increase of 30% in less than a year at an airport that was already one of the top two delay airports in the U.S.

There is no question that the exemption provisions of AIR-21 have significant benefits for competition, by providing new entrant carriers access to slot-controlled airports, and permitting new service to small hub and non-hub airports. The FAA fully supports these goals, and intends to accommodate those goals to the maximum extent practical in measures to manage congestion and delay at LaGuardia Airport.

At the same time, the FAA understands that the capacity of the airport to accommodate additional flights is not unlimited. At some point, the increase in operations

at the airport will result in hundreds of operating delays each day, with increasing average delay times for each flight. Market forces alone have not limited the scheduling of additional operations or the scheduling of these operations in peak hours at the airport. This increasing level of congestion and delay makes carrier schedules impossible to meet, frustrates passenger travel plans, and places an unnecessary strain on carrier ground operations and on air traffic control services. The goals of the AIR-21 exemptions are not served by an unlimited increase in operations, because the flights operating under those exemptions experience the same disruption and delay as existing flights. Ultimately, unlimited growth is not just a service issue; increasing ground congestion increases the possibility of aircraft collisions during taxi and ramp operations, and could increase the possibility of a runway incursion at the airport.

The agency does believe that some action is appropriate and necessary to prevent the scheduling of more flights at LaGuardia than can possibly be operated on any published schedule, and to address the substantial delays experienced even in ideal conditions. After consideration of a number of options for short-term management of congestion, the Port Authority presented a preferred option to the FAA on November 2, which included: (1) the establishment of a certain number of total daily operations at the airport (the Port Authority proposed a limit of 75 total scheduled operations per hour); (2) the total would include a fixed number of AIR-21 exemption operations, determined by the difference between 75 and existing HDR and exemption slots that preceded the AIR-21 exemptions; and (3) allocation by lottery of slot exemptions to conduct that number of AIR-21 operations. (A copy of the Port Authority's letter is placed in the docket.) On November 8, 2000, the Port Authority and the FAA convened a meeting and invited all affected carriers to discuss the situation at LaGuardia and presented the lottery concept. This notice supplements and

clarifies the information made available by the FAA at that meeting. (A copy of the agency's November 7 letter to the Port Authority is located on the FAA's website FAA.gov. and has been placed in the docket.)

In consideration of the urgency of the delay situation at LaGuardia, described above, and the fact that even more flights are planned and will commence operations if some action is not taken, the number of AIR-21 slot exemption flights should be limited to recognize practical constraints of the airport environment and provisions of air traffic services. Since other categories of flights at LaGuardia are already limited, a limit on AIR-21 exemption flights serves to achieve a general limit on airport operations that will prevent increasingly disruptive congestion and longer delays in the future. The limit would not be permanent and would remain in effect until September 15, 2000, when a permanent demand management policy for the airport would be developed with the participation of all interested parties.

The FAA's Air Traffic Service has independently reviewed the Port Authority's proposal for scheduled operations. The limit of 75 scheduled operations per hour would limit daily and hourly demand on airport facilities and the air traffic control system to a number of flights that can be accommodated, at least in good weather conditions and, at the same time, provides access for AIR-21 exemption flights. The number does not include extra sections of scheduled air carrier flights or the 6 slots per hour reserved for "Other" nonscheduled operations including general aviation, charters and military flights.

Re-allocation of slot exemptions at LaGuardia Airport by lottery

The FAA intends to proceed with the development of new department policy on measures available to airport operators for management of congestion, with participation by all interested parties. The goal is to have that policy in final form in time to permit the Port

Authority to adopt measures to replace the allocation of exemption slots under the lottery described in this notice. . However, in the short-term, the FAA believes that the number of AIR-21 exemption operations at LaGuardia should be limited and that an allocation of those flights by lottery to eligible carriers is preferable. The FAA believes that a reallocation of AIR-21 exemption flights at LaGuardia in accordance with the following conditions would meet the goals and requirements of AIR-21, and also would be consistent with the FAA's responsibility for the efficient use of the navigable airspace, under 49 U.S.C. § 40103(b).

On January 1, 2001, the number of scheduled operations at LaGuardia would be limited to approximately 75 per hour. As a result, the number of AIR-21 slot exemptions at LaGuardia would be limited to approximately 150 a day between the hours of 7:00 a.m. and 9:59 p.m. Also on January 1, 2001, the FAA would reissue AIR-21 slot exemptions to eligible carriers in accordance with the results of a lottery. The FAA seeks comments as to whether the January 1, 2001, date is feasible or whether alternative dates are suggested.

In late November or early December, the FAA proposes, in conjunction with the Port Authority, to conduct a lottery at the Port Authority's facilities in New York. Details regarding this lottery would be provided under separate notice in the near future, following consideration of the comments received in response to this notice. The preliminary number of AIR-21 slot exemptions that would be issued in each hour, consistent with an hourly total of 75 scheduled operations is as follows (allocations will be made by 30 minute time periods):

<u>hourly period</u>	<u>number of exemptions</u>
0700	18
0800	11
0900	9

1000	8
1100	8
1200	13
1300	15
1400	8
1500	13
1600	7
1700	2
1800	7
1900	8
2000	6
2100	26

The FAA proposes that carriers eligible for participation in the lottery would be those carriers that have applications on file with the Department, have fulfilled the certification requirements articulated in OST Orders 2000-4-10 and 2000-4-11 as of the date of this notice, and will have commenced operations by January 1, 2001. Definitions for the terms “carrier,” “new entrant,” and “limited incumbent” for purposes of participation in the lottery, are proposed as set forth in 14 CFR 93.123, and amended by § 231 of AIR-21. The Port Authority proposed to consider all carriers operating under a single designator code to be considered a single carrier for the purposes of the lottery. We note that the language in AIR-21 addressing affiliated carriers applies only in determining new entrant status and does not include the provision addressing service for small hub or nonhub airports. Upon reconsideration, the FAA is proposing for comment that independently owned carriers that had obtained AIR-21 certification in their own name could participate in the lottery

separately, regardless of code-share arrangements. The list of eligible carriers below is based on this reconsideration. However, comments are specifically requested on this distinction.

The FAA further proposes that no carrier may select more exemption times than it operated between 0700-2159 on January 1, 2001. The slot exemptions reallocated by lottery would remain in effect until September 15, 2001. The FAA seeks comment as to whether another date in September is more feasible for carriers to make general schedule changes. Carriers that are reallocated exemption slots by lottery should re-certify to the Department of Transportation in accordance with the procedures articulated in OST Orders 2000-4-10 and 2000-4-11, and provide the Department and the FAA with the markets to be served, the number of exemption slots and the time of operation. While this temporary re-allocation process will be conducted jointly with the Port Authority, the FAA wants to make clear that this measure is taken in response to a serious and currently unique situation at LaGuardia Airport under the FAA's authority for the efficient management of the navigable airspace and provided for in AIR-21.

Reallocation of Slot Exemption at LaGuardia by Lottery

In late November or early December 2000, the FAA intends to hold a lottery with the Port Authority to allocate approximately 150 slot exemptions authorized under AIR-21. The FAA proposes the following lottery procedure for allocation of the AIR-21 slot exemptions at LaGuardia:

1. All AIR-21 slot exemptions will be allocated in this lottery, and all carriers currently operating under AIR-21 exemption authority will be required to conform their schedules to the slots received in the lottery, effective on the effective date of the allocation (in January 2001).

2. To be eligible to participate in this lottery, a carrier must have applied to the Department of Transportation under Orders OST 2000-4-10 or 2000-4-11, received allocations by the FAA as of the date of this notice, and commenced operation by January 1, 2001. Carriers that meet this criteria under Order 2000-4-10 and would be eligible for a lottery of times between 0700-2159 are: Air Tran (11 operations), American Trans Air (8 operations), Legend, (7 operations), Midway (9 operations), Midwest Express (8 operations), Spirit Airlines (14 operations), Shuttle America (14 operations), Southeast Airlines (4) and Vanguard (4 operations). Carriers that meet the criteria of Order 2000-4-11 for service for small hub and nonhub airports and would be eligible for a lottery are: American Eagle (26 operations), Atlantic Coast Jet (44 operations), Chautauqua Airlines (12 operations), Colgan Air (20 operations), Commutair (10 operations), Continental Express (22 operations), Delta Connection (37 operations) and US Airways Express (50 operations).

3. The slot exemption lottery will be conducted in accordance with the following procedures:

- a. Carriers will participate in a random drawing for selection order. Carriers will select in that order in each round.
- b. No carrier may select more exemption times than it operated between 0700-2159 on January 1, 2001.
- c. In the first round, only new entrants and limited incumbent carriers may participate. Each new entrant and limited incumbent carrier may select up to 4 slot exemption times, 2 arrivals and 2 departures. No more than one slot exemption time may be selected in any hour. In this round each carrier may select one slot exemption time in each of 4 hours without regard to whether a slot is available in that hour.

d. In the second and third rounds, only carriers providing service to small hub and nonhub airports may participate. Each carrier may select up to 2 slot exemption times, one arrival and one departure in each round.

e. Beginning with the fourth round, all eligible carriers may participate. Each carrier may select up to 2 of the remaining slot exemption times, one arrival and one departure, in each round, until a total of 150 slot exemption times have been selected.

f. If the last remaining slot exemption times available do not permit a reasonable arrival-departure turnaround, the FAA will take requests for trades among AIR-21 operators, or will make an adjustment to one of the times to assure that all slot exemption time pairs selected provide for a viable operation by the selecting carrier.

g. The Chief Counsel will be the final decisionmaker concerning eligibility of carriers to participate in the lottery.

Issued on November 9, 2000 in Washington, DC.

James W. Whitlow
Deputy Chief Counsel